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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re: THERESA C. FISHER, Debtor	CHAPTER 7 CASE NO. 16-12991 (ABA)
SSS EDUCATION INC., d/b/a JERSEY COLLEGE Plaintiff v. THERESA C. FISHER, Defendant	ADV. PRO. NO. 16-01377 (ABA) **HEARING DATE: April 25, 2017 10:00 am** **JUDGE: Hon. Andrew B. Altenburg, Jr.**

PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO EXTEND THE TIME TO APPEAL PURSUANT TO RULE 8002(b)(1)(B) and CROSS-MOTION FOR SANCTIONS

Plaintiff, SSS Education Inc., d/b/a Jersey College ("Jersey College" or "Plaintiff") respectfully submits this objection and cross-motion for sanctions (the "Cross-Motion") in response to Theresa C. Fisher's ("Ms. Fisher" or the "Defendant") *Motion to Extend Time to File Appeal Pursuant to Rule 8002(d)(1)(B)* [Docket No. 21] (the "Motion"). In support of the Cross-Motion, the Plaintiff respectfully states the following:

SUMMARY OF RELIEF SOUGHT

On May 25, 2016, the Plaintiff commenced the above captioned adversary proceeding seeking a judgment deeming that the debt owed by Ms. Fisher to Plaintiff is non-dischargeable pursuant to § 523(a)(6) of the Title 11 of the United States Code (the "Bankruptcy Code"). Ms. Fisher appeared pro-se in this adversary proceeding and at no time did an attorney make an appearance on her behalf.

On November 4, 2016, the Plaintiff filed a *Motion for Summary Judgment* (the "Summary Judgment Motion") [Docket No. 8], which the Court granted by a decision dated January 24, 2017 [Docket No. 17] (the "Decision") and an Order entered on January 24, 2017 [Docket No. 18] (the "Order"). Pursuant to Rule 8002(a) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Ms. Fisher had until February 7, 2017 (the "Appeal Deadline"), fourteen (14) days from the entry of the Order, to file any notice of appeal. No appeal was filed.

On March 8, 2017, Ms. Fisher, by her newly retained attorney, Timothy M. O'Donnell ("Mr. O'Donnell") of Long, Marmero & Associates, LLP ("Long Marmero") filed the Motion seeking to extend Ms. Fisher's time to file a notice of appeal pursuant to Bankruptcy Rule 8002(d)(1)(B). That Rule provides that a bankruptcy court may extend the time for a party to file a notice of appeal if such party files a motion seeking such relief within twenty-one (21) days of the otherwise applicable time for such party to file a notice of appeal, and if the party shows excusable neglect. Mr. O'Donnell filed the Motion twenty-nine (29) days from the Appeal Deadline, eight (8) beyond the time allotted by Bankruptcy Rule 8002(d)(1)(B).

Plaintiff's counsel contacted Mr. O'Donnell telephonically on March 9, 2017 to discuss the untimely Motion and to request that it be withdrawn (Mueller Certification, Paragraph 11). Mr. O'Donnell took a few days to think it over and called Plaintiff's counsel on or about March 13, 2017 during which time he stated he declined to withdraw the Motion (Mueller Cert., Paragraph 12). On March 15, 2017, Plaintiff's counsel sent a letter requesting that the Motion be withdrawn (the "Letter"), providing legal authority to Plaintiff's which prove that the Motion is untimely, is not supported by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law (Mueller Cert., Exhibit 3). The letter prescribed much of the content of this Cross-Motion and specifically advised that sanctions would be sought if the Motion was not withdrawn.

After such communications, Mr. O'Donnell failed to withdraw the Motion and on March 28, 2017, Plaintiff served Mr. O'Donnell with this instant Cross-Motion, (the " Rule 9011 Notice"), pursuant to Bankruptcy Rule 9011(c)(1)(A), which again, for the third time, placed Mr. O'Donnell on notice that the Motion is frivolous and that if the Motion is not withdrawn within twenty-one (21) days from the date of the Rule 9011 Notice, that Plaintiff would file this Cross-Motion seeking sanctions against Mr. O'Donnell and Long

Marmero. As of the filing of this Cross-Motion, the Motion has not been withdrawn and, accordingly, the Plaintiff seeks to have the Court deny the Motion and grant the sanctions sought herein.

JURISDICTION

This Court has jurisdiction of this Cross-Motion pursuant to 28 U.S.C. § 1334(b), and the District of New Jersey Standing Order of Reference dated September 18, 2012. This matter is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (I) and (O).

BACKGROUND

The Court is well versed in the background relating to Ms. Fisher's bankruptcy petition and this adversary proceeding, and the Plaintiff hereby respectfully incorporates the facts from the Court's Decision issued on January 24, 2017 [Docket Nos. 17 and 18].

In connection with the Decision, on January 24, 2017, the Court entered the Order granting the Plaintiff's Summary Judgment Motion. Ms. Fisher acknowledges receipt of the Court's service [Docket No. 20] on January 26, 2017 [Defendant's Cert. ¶ 25]. On January 27, 2017, Plaintiff recognized that Ms. Fisher was *pro* se, and also served a copy of the Notice of Judgment or Order, the Decision, and the Order [Docket Nos. 17 and 18], on Ms. Fisher via certified and regular mail (Mueller Cert., Exhibit 1). Ms. Fisher never claimed the certified mail copy that Plaintiff sent on January 27, 2017 but the regular mail was never returned to Plaintiff's Counsel's office (Mueller Cert., Exhibit 2).

On March 8, 2017, Mr. O'Donnell filed the Motion on behalf of Ms. Fisher. On March 9, 2017, Plaintiff's Counsel called Mr. O'Donnell to discuss the untimeliness of the Motion and to requested that it be withdrawn (Mueller Cert, Paragraph 11). Mr.

O'Donnell called Plaintiff's Counsel on or about March 13, 2017 and declined to withdraw the Motion. The Letter was then sent to Mr. O'Donnell on March 15, 2017 providing legal support that the plain meaning interpretation of Bankruptcy Rule 8002(d)(1)(B) renders the Motion untimely and that there is no basis for any other such interpretation of the Rule. (Mueller Cert, Exhibit 3). Upon Mr. O'Donnell's failure to withdraw the Motion, the Plaintiff served him with the instant Cross-Motion on March 28, 2017 (Mueller Cert, Exhibit 5), as required pursuant to Bankruptcy Rule 9011(c)(1)(A). Despite three (3) clear warning that the Motion is untimely, not supported by existing law and frivolous, to date, Mr. O'Donnell has failed to withdraw the Motion.

RELIEF REQUESTED

Plaintiff requests that the Court deny Ms. Fisher's Motion on the grounds that it was filed untimely pursuant to the time limit set forth in Bankruptcy Rule 8002(d)(1)(B), and even if such Motion was filed timely, which it is not, the Motion fails to set forth facts sufficient to constitute excusable neglect.

In addition, the Plaintiff requests that sanctions be imposed in favor of the Plaintiff, pursuant to Bankruptcy Rule 9011, on Mr. O'Donnell and Long Marmero for presenting the Motion which amounts to legal contentions which are neither warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

LEGAL ARGUMENT

I. The Motion must be denied pursuant to Bankruptcy Rule 8002(d)(1)(B) as it was filed beyond 21 days after the otherwise applicable time to appeal.

Fed. R. Bankr. P. 8002(a) provides that, subject to certain exceptions not applicable here[1], a notice of appeal must be filed within fourteen (14) days after the entry of judgment. Rule 8002(d) provides for an extension of the fourteen (14) day appeal period as follows:

> (1) When the Time May be Extended. . . . ***the bankruptcy court may extend the time to file a notice of appeal*** upon a party's motion that is filed:
> (A) within the time prescribed by this rule; or
> (B) ***within 21 days after that time, if the party shows excusable neglect.***
>
> *Fed. R. Bankr*. P. 8002(d).

In this adversary proceeding, the appeal period deadline was February 7, 2017, fourteen (14) days after the entry of the Order on January 24, 2017. Mr. O'Donnell filed the Motion on March 8, 2017, twenty-nine (29) days after the "time prescribed" in Bankruptcy Rule 8002(a) for filing a notice of appeal, and eight (8) days beyond the applicable time period set forth in Bankruptcy Rule 8002(d)(1)(b). The Third Circuit Court of Appeals has held that, the appeal deadline and extension deadline had expired. See Shareholders v. Sound Radio, Inc., 109 F.3d 873, 879 (3d Cir. 1997) (interpreting prior Rule 8002(c)).

"[W]hen the statute's language is plain, the sole function of the courts . . . is to enforce it according to its terms.". Thus, the necessary starting point in any attempt to discern congressional intent is the language of the statute itself. See United States v. Abbott, 574 F.3d 203, 206 (3d Cir. 2009).

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[1] Bankruptcy Rules 8002(b) and (c) provide certain exceptions to the 14-day period to file a notice of appeal set forth in Bankruptcy Rule 8002(a). Those exceptions apply when a party files certain post-judgment motions or when an appeal is filed by an inmate, neither of which is applicable to Ms. Fisher.

Furthermore, Bankruptcy Rule 9006, which governs the enlargement of time limits prescribed in the Bankruptcy Rules, allows a bankruptcy court to extend certain deadlines for cause, but states that, "[t]he court may enlarge the time for taking action under Rule … 8002 . . only to the extent and under the conditions stated in [that] rule." *Fed. R. Bankr.* P. 9006(b)(3).

Accordingly, because the Motion is untimely, as it was filed beyond twenty-one days from the otherwise applicable time limit Ms. Fisher had to appeal, and because the Bankruptcy Rules do not allow the Court to extend the deadline set forth in Bankruptcy Rule 8002(d)(1)(B), the Motion must be denied.

II. Even if the Motion is deemed timely, it does not warrant an extension of the time to appeal due to excusable neglect

Under Bankruptcy Rule 8002(d)(1)(B), the party seeking an extension carries the burden of proving that the failure to file a timely appeal was the product of "excusable neglect." See, *e.g.*, In re Boyce, 2009 WL 4060093, at *1 (Bankr.E.D.Pa. Nov. 18, 2009); *accord* In re AMF Bowling Worldwide, Inc., 520 B.R. 185, 196 (Bankr.E.D.Va.2014). Under Bankruptcy Rule 8002(d)(1)(B), a court must focus its inquiry on the conduct of the moving party prior to the expiration of the fourteen-day period under Bankruptcy Rule 8002(a), as distinguished from that occurring outside of the period, since a late filing is only permitted under the Bankruptcy Rule where it can be shown that the initial *filing deadline* of Bankruptcy Rule 8002(a) was missed due to "excusable neglect".

In 1993, the United States Supreme Court interpreted the phrase "excusable neglect" as it was used in Bankruptcy Rule 9006(b)(1). See Pioneer Inv. Services Co. v. Brunswick Assocs., 507 U.S. 380 (1993). Numerous courts have determined that the phrase and its interpretation is the same throughout the Bankruptcy Rules, including its use in *Fed.R.Bankr*.P.8002(d)(1)(B) and its predecessor, *Fed.R.Bankr*.P.8002(c)(2). See In re Van Houweling, 258 B.R. 173, 175 (B.A.P. 8th Cir. 2001*).*In this Circuit, the Court of Appeals specifically has held that the Pioneer standard for Bankruptcy Rule 9006(b)(1) is used in applying Bankruptcy Rule 8002(d)(1)(B). American Classic Voyages, 405 F.3d 127, 133 (3d Cir.2005); In Pioneer, the Supreme Court said that the determination of what sorts of neglect will be considered excusable is an equitable determination, taking account of all relevant circumstances including:

1. danger of prejudice to the debtor,
2. the length of the delay and its potential impact on judicial proceedings,
3. the reason for the delay, including whether it was within the reasonable control of the movant, and
4. whether the movant acted in good faith.

Pioneer 507 U.S. at 395.

The Third Circuit has held that the following examination must be conducted by a court when addressing the existence of excusable neglect:

> Although every case must be examined on an ad hoc basis and it is impossible to compose an exhaustive list of factors relevant to a determination of whether excusable neglect has occurred, a thoughtful analysis of this issue in a particular context will, at a minimum, require a weighing and balancing of the following factors: (1) whether the inadvertence reflects professional incompetence such as ignorance of the rules of procedure, *Campbell v. Bowlin,* 724 F.2d 484 (5th Cir.1984) (failure to read rules of procedure not excusable); (2) whether the asserted inadvertence reflects an easily manufactured excuse incapable of verification by the court, *Airline Pilots v. Executive Airlines, Inc.,* 569 F.2d 1174 (1st Cir.1978) (mistake in diarying counsel's calendar not excusable); (3) whether the tardiness results from counsel's failure to provide for a readily foreseeable consequence, *United States v. Commonwealth of Virginia,* 508 F.Supp. 187 (E.D.Va.1981) (failure to arrange coverage during attorney's

> vacation which encompassed end of appeal period not excusable); (4) whether the inadvertence reflects a complete lack of diligence, *Reinsurance Co. of America, Inc. v. Administratia,* 808 F.2d 1249 (7th Cir.1987); or (5) whether the court is satisfied that the inadvertence resulted despite counsel's substantial good faith efforts toward compliance.

Ragguette v. Premier Wines & Spirits, 691 F.3d 315, 325–26 (3d Cir. 2012).

In the Motion, Ms. Fisher asserts that excusable neglect was due to the conduct of her counsel, who did not make an appearance in this adversary proceeding [Defendant's Memorandum of Law, Page 15]. The Court has treated Ms. Fisher as pro-se, and, understandably, afforded her deference and leniency [Docket No. 17 Page 2 Footnote 1 of the Court's Decision]. Now Ms. Fisher seeks to blame her former counsel and to have this Court retroactively consider her as represented by an attorney who failed to make an appearance in this adversary proceeding.

The Supreme Court's decision in Pioneer held that the excusable neglect inquiry focuses on the conduct of the attorney who failed to act timely on behalf of his or her client. See Pioneer, 507 U.S. at 396. This is so because parties are bound by the acts and omissions of their attorneys. *See* Id. ("clients must be held accountable for the acts and omissions of their attorneys"). The Pioneer analysis "*does not focus on whether the clients did all they reasonably could in policing the conduct of their attorney,*" *but* "*whether the neglect of [the clients] and their counsel was excusable.*" In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Products Liability Litigation, 92 Fed.Appx. 890, 893 (3d Cir. Mar. 12, 2004) (nonprecedential) (emphasis in original) (quoting Pioneer, 507 U.S. at 396–97). In another Supreme Court decision discussed in Pioneer, Link v. Wabash R. Co., 370 U.S. 626, the Court "held that a client may be made to suffer the consequence of dismissal of its lawsuit because of its attorney's failure to attend a scheduled pretrial conference" and found "no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client." Id., at 633.

Here, the allegations that Ms. Fisher's former counsel failed to properly advise her on her time to appeal do not constitute excusable neglect. Ms. Fisher received the Notice, Decision, and Order on January 26, 2017 [Defendant's Cert. ¶ 25], as set forth in her Certification accompanying the Motion, contacted her alleged attorney on the same date Id., and provided her alleged attorney with the documents. Id. Thereafter, on February 8, 2017, more than two weeks later, after the Appeal Deadline had expired, Ms. Fisher's alleged counsel contacted her to inform her that he had not received the documentation Id. at Paragraphs 26-27.

Even if Ms. Fisher's alleged counsel did not receive the actual documents, he was aware that and Order and Decision had been entered and should have been aware that the Bankruptcy Rules provide 14-days to file a notice of appeal. Furthermore, Ms. Fisher's alleged counsel made the affirmative choice not to appear in the adversary proceeding and because of that choice, he was not served with the Order and Decision. However, even in light of those decisions, Ms. Fisher's alleged counsel had ample opportunity to access PACER to obtain a copy of the Order and Decision. Moreover, filing a notice of appeal or a motion to extend the time to appeal does not require an attorney and Ms. Fisher could have done either herself.

Ms. Fisher also asserts that excusable neglect occurred because she was not advised of her appeal rights. More than one court has held that counsel's failure to inform a client about an appeal deadline does not constitute excusable neglect. See In re G & S Livestock Co., 478 B.R. 906, 919 (S.D. Ind. 2012) ("Their assertion that their bankruptcy counsel did not inform them of the specific appellate deadline, even if true, does not establish excusable neglect because an inability or refusal to read and comprehend the plain language of the applicable rules is insufficient."); Sabo v. Montgomery, No. 107CV00396DFHTAB, 2008 WL 344549, at *3 (S.D. Ind. Feb. 7, 2008) (holding that a lawyer's failure to file a Notice of Appeal is not grounds for excusable neglect where counsel had all the necessary information to determine the deadline to file a notice of appeal and where movant was aware of entry of the judgment).

The Plaintiff respectfully asserts that all of the factors from the Third Circuit's decision in Ragguette weigh in favor of finding that excusable neglect does not exist, namely that: (1) the inadvertence reflects professional incompetence; (2) the asserted inadvertence reflects an easily manufactured excuse incapable of verification by the Court; (3) the tardiness results from counsel's failure to provide for a readily foreseeable consequence; (4) the inadvertence reflects a complete lack of diligence, See also, Reinsurance Co. of America, Inc. v. Administratia, 808 F.2d 1249 (7th Cir.1987); and (5) no good faith efforts toward compliance were demonstrated. Accordingly, the Plaintiff asserts that the assertions made by Ms. Fisher do not constitute excusable neglect and the Motion should therefore be denied.

III. Sanctions against Mr. O'Donnell and Long Marmermo are Warranted Pursuant to Bankruptcy Rule 9011 & 11 U.S.C. § 105

> Bankruptcy Rule 9011(b) states:
> The signature by an attorney or unrepresented party on any paper filed with the court constitutes a certification "that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,-- (2). the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Bankr. P. 9011(b)(2).

Rule 9011, which owes its origin to Rule 11 of the Federal Civil Rules, is intended to discourage the filing of pleadings in the bankruptcy practice that are "frivolous, legally unreasonable, or without factual foundation." If a court makes a finding that Rule 9011(b) has been violated, Rule 9011(c) permits the court, within its discretion, to impose sanctions upon the offending attorney or party. See Perez v. Posse Comitatus, 373 F.3d 321, 325 (2d Cir. 2004) ("Even if the district court concludes that the assertion of a given claim violates Rule 11, however, the decision whether or not to impose sanctions is a matter for the court's discretion."). "Absent exceptional circumstances" an attorney's law firm will be held jointly and severally liable for Rule 9011(b) violations by its attorneys or employees. *Fed. R. Bankr.* P. 9011(c)(1)(A).

The evaluation whether a claim or defense is warranted or supported by a non-frivolous argument also is measured by an objective standard. See Martin v. Brown, 63 F.3d 1252, 1264 (3d Cir.1995) (citation omitted). Specifically, in evaluating whether Rule 9011(b)(2) has been satisfied or violated, the court must employ "an objective standard of reasonableness under the circumstances." Martin, 63 F.3d at 1264 (quotations and citations omitted); see also Wright & Miller § 1335. Reasonableness is defined as "an objective knowledge or belief at the time of the filing of a challenged paper that the claim was well-grounded in fact or law." In re Kouterick, 167 B.R. 353, 363 (Bankr.D.N.J.1994). No showing of bad faith is necessary. See, e.g., Shine v. Bayonne Bd. of Educ., 2015 WL 5559842, at *3 (3d Cir. Sept. 22, 2015) (unpublished); Martin, 63 F.3d at 1264. "The subjective state of mind of the offending attorney or party has no bearing. Rule 9011's objective standard eliminates any 'empty-head pure-heart' justification for claims or arguments that lack a reasonable basis in fact and law."

Pro se parties and attorneys "are expected to take reasonable preparatory steps before filing pleadings or other papers." Trustees of the Nat. Elevator Indus. Pension, Health Ben., Educ., Elevator Indus. Work Pres. Funds, Elevator Constructors Annuity & 401(K) Ret. Plan v. Access Lift & Serv. Co., Inc., 2015 WL 1456040, at *2 (E.D.Pa. Mar. 30, 2015). Five factors to be considered in determining reasonableness are:

[1] the amount of time available to the signer for conducting the factual and legal investigation;
[2] the necessity for reliance on a client for the underlying factual information;
[3] the plausibility of the legal position advocated;
[4] whether the case was referred to the signer by another member of the Bar; [and]
[5] the complexity of the legal and factual issues implicated.

Mary Ann Pensiero, Inc. v. Lingle, 847 F.2d 90, 95 (3d Cir.1988) (citing Fed.R.Civ.P. 11 advisory committee note; Thomas v. Capital Security Servs., Inc., 836 F.2d 866, 875 (5th Cir.1988)).

Considering these five factors, the Motion filed by Mr. O'Donnell was not properly grounded in fact or law after a reasonable inquiry. First, Mr. O'Donnell had ample time to conduct a thorough investigation into the law before filing the Motion. Ms. Fisher retained Mr. O'Donnell on March 2, 2017, and the Motion was not filed until six days later, on

March 8, 2017. Six days provided Mr. O'Donnell and Long Marmero more than ample time to review the time limit clearly set forth in Bankruptcy Rule 8002(d)(1)(B) and relevant cases which have cited such rule, to determine that the Motion was untimely. Bankruptcy Rule 8002(d)(1)(B) required nothing more than a plain meaning analysis to determine timeliness of the Motion, as no court has interpreted the statute to mean other than what it says. Lancashire Coal Co. v. Sec'y of Labor, Mine Safety and Health Admin. (MSHA), 968 F.2d 388, 391 (3d Cir. 1992) ("[W]hen the statutory language is clear a court need ordinarily look no further."). Nowhere in the Motion does Mr. O'Donnell refer to the twenty-one (21) day time limit set forth in Bankruptcy Rule 8002(d)(1)(B), but does admit that the time limit prescribed by the rule has since expired: Ms. Fisher "was advised after the expiration of the appeal period pursuant to Rule 8002(d)(1)(B) that assistance could not be provided." [Defendant's Memorandum of Law, Page 14] Accordingly, Mr. O'Donnell was aware that the time limit set forth in Bankruptcy Rule 8002(d)(1)(B) expired and still submitted the Motion which lacks an argument well-grounded in fact or law.

Second, Mr. O'Donnell did not have to rely on his client for factual information because the deficiency was statutory and merely required a good-faith review of the Bankruptcy Rules, or applicable case law.

Third, the legal position advocated by Mr. O'Donnell, namely that the Motion is timely, is not a plausible legal position, as every Court which has analyzed Bankruptcy Rule 8002(d)(1)(b) has used a straightforward calculation, limiting any such motion to twenty-one (21) days from the otherwise deadline to appeal. See Cases sited above and re-cited here: *Fed.R.Bankr*.P.8002(d)(1)(B) Sabo v. Montgomery, No.

107CV00396DFHTAB, 2008 WL 344549, at *2 (S.D. Ind. Feb. 7, 2008) (holding that a request made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect; In re Mouradick, 13 F.3d 326, 327–28, 30 (9th Cir. 1994) (bankruptcy court was not free to extend time for filing notice of appeal beyond 21 days from expiration of basic 14-day period); In re Longardner & Associates, Inc., 855 F.2d 455, 462–63, (7th Cir. 1988); Moore v. Hogan, 851 F.2d 1125, 1127, (8th Cir. 1988); In re International Coating Applicators, Inc., 647 F.2d 121, 123–24 n.3, (10th Cir. 1981). See In re Sobczak-Slomczewski, 826 F.3d 429,432 (2016) which in relevant part states: "…the rule allows the *bankruptcy court* to extend the time to appeal due to excusable neglect upon a motion filed within 21 days after the 14-day period has expired. As the district court correctly noted, there are no equitable exceptions to a jurisdictional requirement." Id.

Finally, the legal and factual issues were not complex. As stated above, Bankruptcy Rule 8002(d)(1)(B), perhaps, unlike other sections of the Bankruptcy Code and the Bankruptcy Rules, is straightforward and requires nothing more than reading the provision on its face and calculating the relevant dates. Clearly, Mr. O'Donnell failed to make a reasonable investigation into applicable law before drafting, signing, and filing the Motion, or otherwise willfully disregarded applicable time limits without any legal support therefore. Even if Mr. O'Donnell was over-zealously advocating for his client, Rule 9011's objective standard eliminates any 'empty-head pure-heart' justification for claims or arguments that lack a reasonable basis in fact and law." In re Freeman, 540 B.R. 129, 139

(Bankr. E.D. Pa. 2015). Moreover, Plaintiff's Counsel's call and Letter should have awoken the defense as to the frivolousness of its Motion but apparently did not.

Beyond Rule 9011 of the Federal Rules of Bankruptcy Procedure,

> "It is well established that under 11 U.S.C. § 105, a bankruptcy court has broad powers to implement the provisions of Title 11 and to prevent abuse of the bankruptcy process. *In re Volpert*, 110 F.3d 494, 500 (7th Cir.1997). The provision authorizes the court to sanction attorneys for litigation abuses. *Id.* Such orders are necessary 'to protect the integrity of the Bankruptcy Code as well as the judicial process,'"

In re Reath, No. 04-49188/JHW, 2006 WL 3524458, at *6 (Bankr. D.N.J. Dec. 6, 2006) citing In re Arkansas Communities, Inc., 827 F.2d 1219, 1222(8th Cir.1987).

Accordingly, the Plaintiff seeks to have sanctions imposed on Mr. O'Donnell and Long Marmero jointly and severally in favor of the Plaintiff. The Court has treated Ms. Fisher as pro-se, and, understandably, afforded her deference and leniency [Docket No. 17 Page 2 Footnote 1 of the Court's Decision]. Now Ms. Fisher seeks to blame her former counsel and to have this Court retroactively consider her as represented by presenting this untimely Motion. Therefore, Plaintiff respectfully submits that such sanctions should be no less than the fees, expenses and costs incurred by the Plaintiff's counsel in connection with the Motion, the Cross-Motion, and any appearances before the Court.

CONCLUSION

For the reasons stated *supra*, Plaintiff, Jersey College, respectfully requests that the Court deny Defendant's motion to extend the time to appeal pursuant to Rule 8002(d) and grant Plaintiff's instant motion for sanctions pursuant to Rule 9011(c) or 11 U.S.C.A. § 105.

Dated: March 28, 2017

Respectfully submitted,

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